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| 10/803,451      | 03/19/2004  | Eric R. Fruechting   | FRU101              | 5396             |

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John E. Vandigriff  
190 Stemmons Frwy., Suite 200  
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EXAMINER

CHAMBERS, MICHAEL S

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3711

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/803,451

Applicant(s)

FRUECHTING, ERIC R.

Examiner

Mike Chambers

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-19 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-10 and 20 is/are rejected.
- 7) ☒ Claim(s) 4 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

Claims 10 and 19 are objected to because of the following informalities:

In line 2: "open" should be -- opening --.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,5,7, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Burnes. Burnes discloses

a first strip of material for positioning adjacent to a home plate (12) ; and a plurality of foot position indicators (14,16) moveably attached and extending from the first strip of material, each foot position indicator having an edge (fig 2). In as much structure set forth by the applicant in the claims, the cited device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claim 2 : Burnes discloses a fastener (fig 4, item 80).

As to claim 5 : Burnes discloses a flexible material (2:39-41).

As to claim 7 : Burnes discloses a foot outline (fig 3).

As to claims 9 and 10 : Burnes discloses indicia (fig 1, 5:27-30).

Also,

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Claims 1-3,5,7, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Bozzacco. Bozzacco discloses

a first strip of material for positioning adjacent to a home plate (24) ; and a plurality of foot position indicators (9a,10a) moveably attached and extending from the first strip of material, each foot position indicator having an edge (fig 6). In as much structure set forth by the applicant in the claims, the cited device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claim 2 : Bozzacco discloses a fastener (fig 6, item 10c).

As to claim 3 : Bozzacco discloses an opening (fig 6, item 24a,24b).

As to claim 5 : Bozzacco discloses a flexible material (1:57-58).

As to claim 8 : Bozzacco discloses slidable fasteners (fig 3).

As to claims 9 and 10 : Bozzacco discloses indicia (fig 1, 5:27-30).

Also,

Claims 1,2,3,5,7, 8,9 ,10 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Taylor. Taylor discloses

a first strip of material for positioning adjacent to a home plate (11) ; and a plurality of foot position indicators (20,21) moveably attached and extending from the first strip of material, each foot position indicator having an edge (fig 1). In as much structure set forth by the applicant in the claims, the cited device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claim 2 : Taylor discloses a fastener (fig 1, item 20a).

As to claim 3 : See lead lines 15, 16, in fig 1 and 4.

As to claim 5 : Taylor discloses a flexible material (2:15-20).

As to claim 7 : Taylor discloses a foot outline (fig 1, item 20b). In as much structure set forth by the applicant in the claims, the cited device is capable of use in the intended manner if so desired

As to claim 8 : Taylor discloses a slidable fastener (fig 1, item 20a).

As to claims 9 and 10 : Taylor discloses indicia (fig 1, 5:27-30).

As to claim 20 : see claim 1 and 10 rejection.

Also,

Claims 1,2,5,7, 8,9 ,10 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Pierce. Pierce discloses

a first strip of material for positioning adjacent to a home plate (22) ; and a plurality of foot position indicators (38) moveably attached and extending from the first strip of material, each foot position indicator having an edge (fig 4). In as much structure set forth by the applicant in the claims, the cited device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claim 2 : Pierce discloses a fastener (fig 7, item 38).

As to claim 5 : Pierce discloses a flexible material (2:47-50).

As to claim 7 : Pierce discloses a foot outline (fig 7, item 38). In as much structure set forth by the applicant in the claims, the cited device is capable of use in the intended manner if so desired

As to claim 8 : Pierce discloses a slidable fastener (fig 7).

As to claims 9 and 10 : Pierce discloses indicia (fig 7).

As to claim 20 : see claim 1 and 10 rejection.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burnes as applied to claim 1 above, and further view of Schnorr. Schnorr discloses the use of openings for anchoring the device (fig 1b,1c). It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the anchoring means of Schnorr with the apparatus in order to prevent the device from moving during use.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pierce as applied to claim 1 above, and further view of Schnorr. Schnorr discloses the use of openings for anchoring the device (fig 1b,1c). It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the anchoring means of Schnorr with the apparatus in order to prevent the device from moving during use.

***Allowable Subject Matter***

Claims 4, and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 11-19 are allowed.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Chambers whose telephone number is 703-306-5516. The examiner can normally be reached on Mon-Fri 8:30-5:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

4248431\*4407233\*4932656\*3041075\*5607150\*

Michael Chambers  
Examiner  
Art Unit 3711

September 14, 2004

  
GREGORY VIDOVICH  
SUPERVISORY PATENT EXAMINER  
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